

COLORADO DEPARTMENT OF HEALTH CARE POLICY & FINANCING

1570 Grant Street, Denver, CO 80203-1818 ◆ (303) 866-2993 ◆ (303) 866-4411 Fax ◆ (303) 866-3883 TTY 8ill Ritter, Jr., Governor ◆ Joan Henneberry, Executive Director

November 16, 2010

Mr. Joseph Gaiser, Acting Director
Division of State Demonstrations & Waivers
Center for Medicaid, CHIP and Survey & Certification
Centers for Medicare & Medicaid Services
Department of Health and Human Services,
Attention: CMS-2325-P
Mail Stop C4-26-05
7500 Security Boulevard
Baltimore, MD 21244-1850

RE: CMS-2325- P Proposed Rules Medicaid Program; Review and Approval Process for Section 1115 Demonstrations

Dear Mr. Gaiser:

I am writing to you on behalf of Colorado's single state Medicaid agency, the Department of Health Care Policy and Financing to provide comment related to proposed rule CMS-2325-P Review and Approval Process for Section 1115 Demonstrations under Section 10201(i) of the Patient Protection and Affordable Care Act of 2010.

Colorado appreciates the value to States and stakeholders of having expectations for federal review and approval of research & demonstration waivers clearly delineated and transparent but wishes to ask for clarification on some provisions and to raise concerns about other provisions. In order, Colorado has these specific comments on the proposed regulations:

§ 431.408 (a)(1)(i)(C) State public notice process. Public notice and comment period. Please revise the language at §431.408(a)(1)(i)(C) regarding public notice information to clarify that the financial analysis of changes to the demonstration requested by the State is for renewal applications only.

§ 431.408 (a)(2) State public notice process. Statement of public notice and public input procedures. Please revise the language to correct the citation in the final sentence to "... paragraphs (a)(2)(i)(A) and (B) of this section." There is no paragraph (a)(2)(ii)(A) and (B).

§ 431.412 (b) Application procedures. Demonstration applications procedures. Please consider revising the language concerning submission to CMS in both printed and electronic document format to clarify that the date of those submissions constitutes the State demonstration application submission date. Colorado suggests that in the event that printed and electronic documents are submitted on different dates, the date of electronic submission shall be deemed the official submission date.

- § 431.412 (c) Application procedures. Demonstration Extension Request. Colorado has concerns about challenges associated with the requirement to submit an extension request at least 12 months prior to the expiration date in cases of an <u>initial</u> extension request. The implementation date of a demonstration waiver program is typically subject to the federal approval date of the demonstration and of an information system's Advance Planning Document (APD). In Colorado's experience the review and approval of APDs is contingent upon federal policy approval of the demonstration waiver. As information system changes are not eligible for federal financial participation (FFP) until the APD is approved, the sequencing of approvals results in start dates that may be significantly delayed. If an initial approval time is limited to three (3) years and the request for extension must be submitted by the end of Year 2, there may not be sufficient data yet reported to robustly support the demonstration hypotheses. Colorado suggests this challenge can be resolved by adding an implementation date to the timing framework, with the initial demonstration period corresponding to three (3) years of implementation rather than approval. Additionally, Colorado suggests that the requirement for submitting party of a demonstration extension be expanded to allow for it to be sent "... from the Governor or designee."
- § 431.412 (c)(2)(iv) Application procedures. Demonstration Extension Request. The listing of quality assurance monitoring entities is framed as a requirement for summaries from <u>all</u> to be submitted. Colorado suggests revising the language from an "and" statement to an "or" statement with the addition of "... as appropriate to the focus of the demonstration," would provide States the flexibility to submit the necessary quality assurance monitoring report summaries without obligation to submit irrelevant reports in order to comply.
- § 431.416 (b) Federal public notice and approval process. Public comment period. Please clarify CMS' intended use of any public comment it receives on a State's demonstration application, and whether CMS will make that public comment available to the State submitting the application prior to electronic publishing of those comments.
- § 431.416 (b)(2) Federal public notice and approval process. Public comment period. The language of paragraph (b)(2) includes notification of interested parties through an electronic mailing list. Please clarify whether the intended purpose of the mailing list is to provide notification that a demonstration application is available for public review and comment.
- § 431.428 (b)(2) Reporting requirements. Submitting and publishing annual reports. Please clarify CMS' intent for requiring the State to publish draft annual reports on the State's public Web site. Colorado recommends the language be revised to delete reference to a draft report and limit the publication requirement to final annual reports.

Thank you for the opportunity to provide comment and ask for clarification. Should you have any questions, I can be reached at <u>Barbara.prehmus@state.co.us</u> or via telephone at (303) 866-2991.

Sincerely,

Barbara B. Prehmus, M.P.H. Federal Policy & Rules Officer

Cc: Ms. Joan Henneberry, Executive Director

Ms. Lorez Meinhold, Director of Health Reform Implementation & Senior Health Policy Analyst, Colorado Governor Bill Ritter, Jr. Ms. Cynthia Mann, Center for Medicaid, CHIP, Survey & Certification